

A. Ludicrous Timetable

At the most, the proposed rule envisions total action by 45 days or else the request is deemed granted. Within the pertinent 21, 30 or 45 day period, as discussed, city staff must review the application, notices must be delivered and hearings held and the City Council resolve any differences of opinion. Occasionally, The City Council considers a problem so difficult that it wants time for more information or time for the applicant and the opposition to find a mutually acceptable solution. The proposed timeline precludes this process. The process could be lengthened by such causes as a incomplete submittals from the applicant, continuation of hearings, postponement of hearings or the recess of approval bodies. Staff charged with reviewing applications take vacations. The governing bodies may not act on official business for two months. The Dallas City Council, in addition to time at the end of the year, usually takes a recess of 4 to 6 weeks in the summer. Under the proposed rule, a clever tower applicant will submit his or her application in the day after one of these recesses begins and have the approval deemed within 21, 30 or 45 days, as appropriate, completely bypassing the public hearing process and the governing body review process required by state law.

City staff is expected to be prepared for these meetings. This length of this preparation time is largely dependent upon the submittal of necessary information from the applicant. Time is required for City staff to meaningfully examine the application, address public health and safety matters, as well as aesthetics and the appropriateness of the land use in light of other nearby land uses. Depending upon

the action required the applicant, the staff review time period may be longer or shorter.

While the provisions of state law and the Dallas Development Code may slow the process, the reality is that the procedure allows the different interests to meet and reach solutions that benefit all parties. Although the process takes time, most zoning cases are finally approved with the support of all interested parties. Obviously, this process of consensus development will typically take longer than the 45 day outside limit allowed under the proposed rule.

Under deemed approval, applications will be approved before a consensus can be built, leading to bad decisions and appeals to the courts and/or the FCC. From a strictly local standpoint, the tower will have some very unhappy neighbors. Based upon prior experience, the City suggests that the FCC does not want this outcome.

The proposed timelines, in actuality, could actually have a perverse effect upon expedited construction. With a short timeframe, a local governing body may feel the need to simply deny the request. Not enough time is present to do otherwise. If this process is repeated throughout the country and alternate dispute resolution before the FCC is adopted, the FCC will be presented with a substantial number of zoning issues. Cases could well back-up with the result that the FCC will be hearing a great many tower siting matters.⁴²

⁴² NPRM ¶15. The FCC notes its reluctance to involve itself in local zoning matters.

B. Legitimate Land Use Distinctions

The proposed rule makes no allowance for the compatibility of land uses. In other words, the rule allows a tower to be placed next to any other adjacent land use, subject to rebuttal of presumed preemption or an ordinance enacted for health and safety reasons. A tower may be placed anywhere - in a downtown city block or even the middle of a residential neighborhood. The proposed rule also makes no allowance for existing zoning based on geological distinctions. For instance, in Dallas, the escarpment is a protected land area, deemed environmentally fragile. In other areas of the country, harbors, river beds and potential faults present other locally sensitive concerns.

Zoning provides stability to property values by assuring the compatibility of uses. Homeowners rely upon the zoning in buying their homes. Shopping centers rely upon zoning in creating an attractive place to shop. Other businesses rely upon zoning for the effective output of their organizations. Aircraft manufacturers locate in areas as far away as possible from towers, in order to be able to test planes and helicopters. Similarly, hospitals and certain police and ambulance facilities need to be far away from towers in order for helicopters and small planes to use their facilities.

The proposed rule makes little or no allowance for these considerations, violating the basic tenet of sound land use policy. Under the rule, if a broadcaster found a suitable site in the middle of a residential area, a local government could not deny the application because adjacent land uses were not compatible. Health and

safety rules might be available depending upon the ability to rebut the presumption of invalidity. Even the previous FCC rules on satellite antenna, much smaller structures than the broadcasting facilities at issue in this rulemaking, recognize distinctions in land use.⁴³

C. Safety concerns

We will not repeat here the previous discussion on the threats to the public health and safety posed by the proposed rule through the limitation and elimination of local zoning authority and building codes but make comments which have not previously made.

NAB complains of "fall radius" rules. A tower may be located, under the proposed rule, within the fall distance of residences, schools, shopping and highways. High winds, ice, hurricanes, earthquakes and human mischief - all are potential threats to the stability of DTV and other broadcasting facilities. As recently occurred, towers can collapse while being refurbished. In the Dallas area tower collapse mentioned earlier, the tower actually fell; it did not collapse into a mass at the base. Unless NAB can guarantee that a tower will not impact adjacent surrounding properties (which the City doubts is possible), fall radius rules are necessary to remove the potential safety risks to adjacent property and life.

In considering the DTV towers which may be the tallest structures in a

⁴³ 47 C.F.R. §25.104. Distinctions are based upon locations of the antennas - commercial, residential or industrial areas. Because of the enormous height and mass distinctions, the City does not believe that similar distinctions are warranted in this case but merely points out that the FCC has recognized that certain land uses deserve more protection.

community, adequate review will take some time to ensure that, at a minimum, the life and property of citizens and others will be safe and minimally impacted. The adjacent uses must be examined. Local officials owe their constituents a duty to ensure that an unsafe structure is not erected in their community.

FAA does not oversee all airports. Texas law grants local municipalities zoning authority related to airports.⁴⁴ Obviously, a rule which deems approval of siting requests at the end of the runway or in the clear zone creates a problem for air navigation.

D. Aesthetics

Aesthetic considerations are valid matters of local concern.⁴⁵ The inability to consider aesthetics defies the law of nuisance which the Court cited with approval in upholding local zoning authority. Homeowners and businesses often pay significant sums to buy property with a scenic view. A typical tower, looming over all adjacent uses, festooned with bright aircraft warning lights, colorfully painted in 50 foot sections of red and white and carefully hung with guy wires, will not add to the property values in the area. Elimination of aesthetics in the proposed rule ignores such financial impacts.

⁴⁴ Tx. Local Government Code, Chapter 241.

⁴⁵ The Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365 (1926). The Court points out, "A nuisance may be merely a right thing in the wrong place, like a pig in a parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Id. at 388 [cite omitted].

The indiscriminate placement of towers in residential areas could have a devastating impact upon property values. Imagine a 2000 foot tall tower plopped into a wealthy residential enclave. Nothing in the proposed rule prevents this and in fact local governments would be powerless to stop this type of placement, but for health and safety reasons.

Tower placement can also have an effect upon less well populated or less affluent areas. With the construction of the tower, desirable land uses may be discouraged. Particularly in a vulnerable area or an area of economic blight, a digital tower constructed with little public input could lead to claims of environmental injustice and aggravated economic blight.

Ignoring aesthetics in favor of reception of DTV transmission depreciates the entire community. If the FCC persists in the elimination of aesthetics as a proper consideration, then it is foreseeable that benefitted broadcasters and the FCC will be asked to compensate property owners for the diminution in property values suffered as a result of FCC regulations. Given the current trend in takings jurisprudence, the law may well impart financial responsibility for the diminution in property value under inverse condemnation principles.⁴⁶

E. Shifting of Burdens in the Balancing Test

The deferential judicial presumption accorded state and local legislation is found lacking in the proposed rule. The rule stands this traditional deference on its

⁴⁶ U.S. v. Causby, 328 U.S. 256 (1946). The federal government overflights created a taking of the property and business of the plaintiffs.

head and subjects local zoning authority to review under a standard which is much less deferential than even a dormant Commerce Clause analysis.⁴⁷ Local governments are put in the unique and uncommon position of defending the reasonableness of their legitimate public health and safety regulations against a presumption of invalidity rather than a presumption of legitimacy and the burden instead placed upon the allegedly aggrieved broadcaster to demonstrate that the rule has no local benefit. Even the judge has changed under this standard. The arbiter has expressed its position - expedited roll-out of DTV- which favors the interests of one of the parties. Thus, not only is the judicial deference to local government regulations lacking, the review lacks impartiality.

The balancing test incorporated into the proposed rule is, in part, a reflection of the earth station rule adopted by the F.C.C.⁴⁸ The same improper presumption of invalidity found in that rule attaches to the local health and safety ordinance affecting DTV and other transmission facilities. For no discernible reason, the proposed rule though is much more restrictive. The earth stations will be much less visually conspicuous than the DTV towers and other transmission facilities at issue in this rulemaking. Yet, aesthetics may be used to justify the local ordinance with respect to earth stations. Aesthetics may not be used for the broadcasting facilities

⁴⁷ See e.g. Pike v. Bruce Church, Inc., 397 U.S. 137 (1970). The Court sets out a deferential balancing test for state regulations and interstate commerce. The state law will be sustained unless "the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." Id. at 142.

⁴⁸ 47 C.F.R. § 25.104 Preemption of local zoning of earth stations.

covered in the proposed rule.

F. Alternate Dispute Resolution

Violation of any rule should be heard in a local court, not at the FCC. The City strongly objects to alternate dispute resolution before the FCC. The reasons for judicial review, as opposed to FCC review, are primarily twofold.

1. Alternate dispute resolution turns the FCC into a national zoning board. The FCC is ill-equipped to comprehend the issues faced by local governments and the reasons underlying local government action. Tower siting is not a communications issue; these are land use issues which should be heard by an arbiter - in this case a court - familiar with local property law and land use issues. The FCC cannot hope to be aware of the subtleties of real property law and zoning practices in the various states and communities, nor differences based on geological or meteorological concerns.

The rule goes farther than merely establishing the FCC as a national zoning board. The FCC will be in a position to monitor compliance with building codes or the functional equivalent. If the FCC does not want to become a "national zoning board", how much less does it want to become the "national board on tower building code compliance"?

2. The FCC is a foreign forum which often will be great distances from the affected local community. Depending upon their size and financial well-being, local governments may not be able to travel and retain counsel and other experts necessary to meet a challenge at the FCC. The procedures are

unknown to local governments. The underlying zoning regulations and building codes may be founded on valid public safety concerns, which will go unrecognized and disregarded.

A judicial determination is a much more equitable process for all parties. It is in the best interests of the FCC because no federal resources will be required. It does not work a hardship on the broadcaster, who is already present in the community. The local government is presumably familiar with practice before the local court. The evidence, if any, will be present in the local jurisdiction.

If the FCC persists in the use of alternate dispute resolution, then the City has several recommendations.

1. The panel should be composed of an FCC official, the Secretary of the Department of Housing and Urban Development or his designee and an academic versed in urban planning issues. The addition of the two other individuals assures that the impacts of the tower siting upon the community would be developed and considered during the proceeding.
2. The location of the alternate dispute resolution hearing should be in the community where the tower is to be sited. The broadcaster is present there as is obviously the local government.
3. Notice to the public should be given and public input should be taken.
4. The FCC must report the results to the U.S. Representatives whose districts are within 20 miles of the tower site as well as the state's two U.S. Senators.

G. The Rule is overbroad and Lingers too Long.

The proposed rule lingers indefinitely; no reason exists for a permanent rule. At a minimum, the rule should be limited to the deadline imposed by the FCC for the build-out. Further, the rule should not apply beyond the specified build-out deadlines for the various television market areas. It should expire, according to its own terms at that time. Limiting the time limit of any rule will prove an incentive to the broadcasters to actually build-out the needed facilities.

The proposed rule is overbroad in three respects. First, all broadcast transmission facilities are covered. Supposedly the rule is required to facilitate the deployment of digital broadcast facilities. Therefore, no need exists to cover unrelated FM towers and facilities, as well as all analog and AM transmission facilities. If the purpose of the proposed rule is to expedite the roll-out of digital television, then the rulemaking should be limited to those towers alone. Second, preemption is an action which should be reluctantly undertaken. A rule which encompasses facilities not pertinent to the expedited roll-out of digital television would violate this principle. Third, the rule extends to not just towers but "associated" facilities. No demonstrated need exists to extend this rule to cover studios or structures which house engineering or other functions necessary to deliver any programming. Because less intrusive and smaller, these structures are more easily accommodated than towers. Indeed, NAB cites no alleged overreaching with respect to such structures.

H. Insurance

We have previously noted the dangers posed by towers to adjacent property owners. Tower owners should be required to obtain adequate insurance to cover the risks to adjacent property and life due to tower collapse both during and after installation. Insurance should also be in place to cover the contractors who will construct the towers. Tower owners and those placing antennas and other facilities on towers should be required to sign indemnity agreements.

I. Speculative Towers

During the meeting of the ten largest television markets, several representatives noted that developers desired to site and construct speculative towers. The City supports the entrepreneurial spirit of such tower speculators, but proliferation of towers should not be encouraged. Under the proposed rule, denial of approval can not be based upon the lack of tenants for the tower. In other words, a speculator can install a tower and then the community could be left with a "white elephant."

The federal interest in the deployment of digital television is not furthered by empty towers. If a tower is not owned by a broadcaster who in turn commits to placing its facilities upon the tower, the rule should reflect that local governments can deny land use authority until a tenant is secured. Local governments should be able to inquire whether facilities will be placed on the tower at the time of the zoning application.

NAB complains about co-location requirements. The City points out that digital television is furthered by co-location requirements. Roll-out should be expedited through co-location; installation of one tower will be quicker than installation of 4 towers. Tower construction time is minimized; costs are held down with the result that the unexpended sums may then be applied to other technical requirements.

Local governments should also be allowed to require the removal of towers once they are no longer in use. Unused towers, which will probably have a diminished degree of maintenance, pose a greater threat of collapse and do nothing to promote broadcasting services.

CONCLUSION

If the FCC is really serious about accelerated roll-out, its focus should be directed at broadcasters, not local governments. Rather than a useless preemption, the FCC should focus on broadcaster action and create incentives to move the broadcasters along in implementation.

The City recommends that the FCC abandon this rulemaking in its entirety. The proposed rule imperils life and property and rests on dubious statutory authority. The record supplied by NAB does not demonstrate the need for the rule and reports indicate that the rule would not result in meeting the accelerated roll-out envisioned by the FCC. The proposed rule raises a number of Constitutional concerns. The proposed rule raises, rather than answers, local health and safety issues. Finally, the proposed rule, in its specifics, contemplates no meaningful

involvement by local governments or their constituents, lacks significant planning review and will establish the FCC as a national zoning board.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Scott Carlson", is positioned above a horizontal line.

Scott Carlson
Assistant City Attorney
City of Dallas
1500 Marilla, Room 7/D/N
Dallas, Texas 75201
(214) 670-3478 (phone)
(214) 670-0622 (facsimile)

Exhibit A





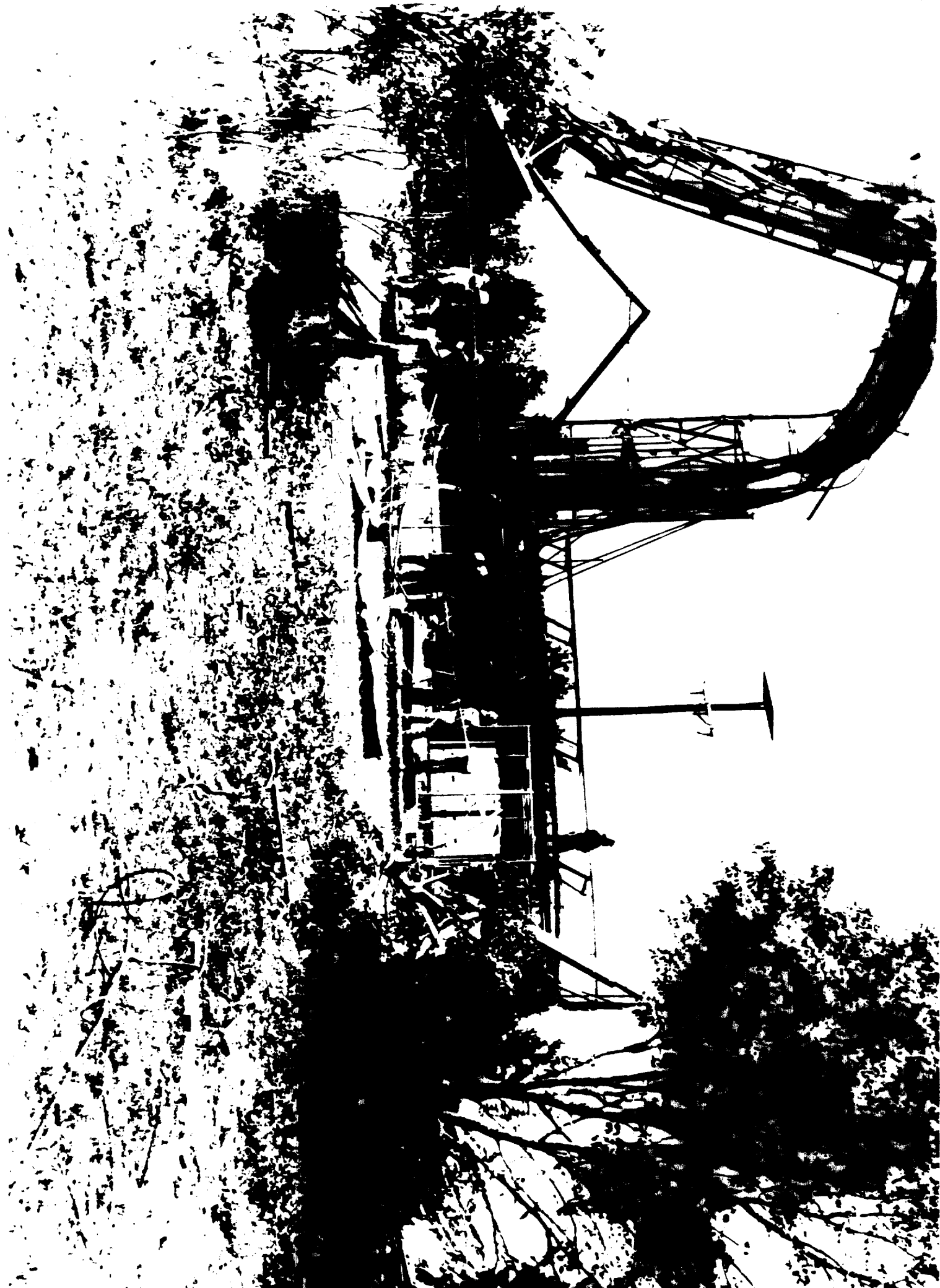


Exhibit B

TV tower collapse still a mystery

By Berta Delgado

Staff Writer of The Dallas Morning News

A month after it happened, officials still can't say why a 1,550-foot television tower collapsed in Cedar Hill, killing three workers.

"All I can tell you right now is that it fell," said George Cshahanin, director of engineering for KXAS-TV (Channel 5) and KXTX-TV (Channel 39). "There are many clues, but nothing I can discuss at this time."

The three workers were preparing to install a new antenna when the

Investigation ongoing, but officials giving no answers in fatal event

Channel 39 tower, just off Belt Line Road and a couple of miles west of U.S. Highway 67, came crashing down on Oct. 12. Joseph William Kelly Jr., 19, Dana Orlan "Doc" Campbell, 32, and John Stinson, 28, worked for Doty-Moore Tower Services of Cedar Hill, which maintained the tower.

Sherrie Moran, spokeswoman for the U.S. Occupational Safety and Health Administration, said investigators have interviewed some witnesses and did an investigation at the site. Investigators are doing lengthy lab tests on the remains of the tower and technical studies to look at what might have happened, she said.

"Our overriding concern is not just what happened but other aspects that might have a bearing on other towers across the country, so we can get the Please see FATAL on Page 24A.

Fatal TV tower collapse still a mystery

Continued from Page 17A.

word out," she said.

If OSHA does cite somebody, she said, it will have to be done within six months.

"We would rarely have an investigation go beyond that point," she said. "We will let them know what we found even if there are no citations."

Insurance companies for Channel 39 and for Doty-Moore also are investigating.

Engineering officials from Channel 39 at one time said that human error might have played a role. Engineers had said that the men might have mishandled the tower's "gin pole" — a heavy mechanical device used to access the top of the structure — causing the pole to collapse.

"The investigation into the accident is still ongoing," said Mario Schrader, company representative for Doty-Moore. "At this time, we have no answers about what happened."

Mr. Cshahanin said the investigation will take some time.

"I'd like to say it'd be a month, or a week, but it would be misleading," he said. "I don't know; nobody knows."

In the meantime, Mr. Cshahanin said a salvage company is moving the wreckage to another location in Cedar Hill.

"We are preserving it in a way that it can still be investigated," he said. "But then I can get on with life and start rebuilding that facility."

He said the station would like to have the tower ready April 1. Currently, Channel 39 is transmitting from a lower-power facility at the Channel 5 transmitting site, he said.

Members of the victims' families said they hope the investigations will turn up answers.

"They have a difficult task to do, and I hope they do it accurately," said Colby Jarrett, Mr. Kelly's stepfather. "We'd really like to know."

Michael Stinson, Mr. Stinson's father, said it is important to get answers, not for his son and the other victims but for men still doing that job.

"If there was something wrong and they know what it was, there might be

something wrong with other towers, and every single guy who goes up there is in danger," he said. "If there's a problem, it needs to be corrected."

Mr. Campbell's family declined to comment.

On the Saturday morning of the collapse, many residents were attending the Country Day on the Hill festival nearby. Cedar Hill police and OSHA officials learned that some residents might have turned their video cameras toward the tower and captured the collapse on tape.

"If anybody has videotape, we would be interested in seeing that," Ms. Moran said. "Witnesses who saw it should call us."

Mr. Jarrett said he hopes that if someone did record the collapse, they will turn it over to authorities.

"We pray that something shows us what happened," the Cedar Hill man said. "We have put all our trust in Christ, and we know he took Joe to be home with him."

People who witnessed or recorded the event should call the OSHA Dallas area office at (214) 320-2400.

Anyone wishing to contribute to the memorial fund established to help the families of workers can make donations to Doty-Moore Employee Memorial Fund, Attn: Donna Miller, Bank One, 3035 Main St., Duncanville, Texas 75116.



The Dallas Morning News Kim Rasmussen

Investigators still aren't sure what caused last month's collapse of a radio and television

tower, shown on Oct. 11, the day of the accident that killed three workers in Cedar Hill.

Cause of fatal TV tower collapse still a mystery

By Berta Delgado

Staff Writer of The Dallas Morning News

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"All I can tell you right now is that it fell," said George Csahanim, director of engineering for KXAS-TV (Channel 5) and KXTX-TV (Channel 39). "There are many clues, but nothing I can discuss at this time."

The three workers were preparing to install a new antenna when the Channel 39 tower, just off Belt Line Road and a couple of miles west of U.S. Highway 67, came crashing down on Oct. 12. Joseph William Kelly Jr., 19; Dana Orlan "Doc" Campbell, 32; and John Stinson, 28, worked for Doty-Moore Tower Services of Cedar Hill, which maintained the tower.

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istration, said investigators have interviewed some witnesses and did an investigation at the site. Investigators are doing lengthy lab tests on the remains of the tower and technical studies to look at what might have happened, she said.

"Our overriding concern is not just what happened but other aspects that might have a bearing on other towers across the country, so we can get the word out," she said.

If OSHA does cite somebody, she said, it will have to be done within six months.

"We would rarely have an investigation go beyond that point," she said. "We will let them know what we found even if there are no citations."

Insurance companies for Channel 39 and for Doty-Moore also are investigating.

Engineering officials from Channel 39 at one time said that human error might have played a role. Engineers had said that the men might have mishandled the tower's "gin pole" — a heavy mechanical device used to access the top of the structure — causing the pole to collapse.

"The investigation into the accident is still ongoing," said Marlo Schrader, company representative for Doty-Moore. "At this time, we have no answers about what happened."

Mr. Csahanim said the investigation will take some time.

"I'd like to say it'd be a month, or a week, but it would be misleading," he said. "I don't know; nobody knows."

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Friday, April 11, 1997

The Dallas Morning News

35 A

OSHA cites employer of 3 killed in tower collapse

By Berta Delgado

Staff Writer of The Dallas Morning News

The company that employed three men who were killed when a 1,550-foot television tower collapsed in Cedar Hill in October has been cited by OSHA for alleged safety violations, the U.S. Department of Labor announced Thursday.

Doty-Moore Tower Services Co. of Cedar Hill was cited for seven alleged serious violations and fined \$29,400 for the Oct. 12, 1996, collapse of the KXTX-TV (Channel 39) tower, the federal Occupational Safety and Health Administration said.

The three workers were preparing to install a new antenna when the tower came crashing down. Killed were Joseph William Kelly Jr., 19, Dana Orlan "Doc" Campbell, 32, and John Stinson, 28.

The company has until May 1 to comply or contest the citations and penalties.

Cedar Hill firm says it will contest allegations of safety violations

Sarah Cowen, the attorney representing Doty-Moore, said the company will contest OSHA's ruling.

"We deny the accuracy of the accusations, and we believe the findings are based on incorrect facts," she said. "We intend to fight even if it involves litigation with OSHA."

Joe Reina, Dallas area director for OSHA, said he could not go into specifics of the investigation, but his office released general information about the alleged violations.

According to OSHA, four of the seven violations related directly to the operation of installing the derrick pole. Also among OSHA's findings:

- Inadequate safety procedures, training and instructions to the employees involved.
- Lack of inspections by people

knowledgeable in the proper installation and use of the support installation equipment for the derrick.

■ Failure to follow the manufacturer's design in the use of the installation equipment.

The other three alleged violations involve "inadequate fall protection procedures for fall hazards to which employees are commonly exposed in the tower industry," OSHA said.

Federal law requires that OSHA complete its investigation within six months. Mr. Reina said that it is unusual for investigations to take the entire allotted time but that this case was complex.

He said penalties are assessed by a computer program that reviews many factors, including the size of the company, the history of the company and the working condi-

tions on the day of the incident. He said that the penalty for a serious violation can range from no fine to a \$7,000 fine and that there have been fines in some cases in the million-dollar range.

Mr. Reina said that if the company contests the allegations, the parties will go before an administrative law judge, who will decide if there were violations.

On the Saturday morning of the collapse, many residents were attending the Country Day on the Hill festival near the tower, just off Belt Line Road and a couple of miles west of U.S. Highway 67. Cedar Hill police and OSHA officials asked anyone who might have captured the collapse on videotape to turn the tape over to authorities. Mr. Reina would not say if videotapes were turned in.

Engineering officials from Channel 39 said at one time that human error might have played a role in the accident. Engineers said that the men might have mishandled the tower's "gin pole" — a heavy mechanical device used for access to the top of the structure — causing the pole to collapse.

George Csahanim, director of engineering for Channel 39 and KXAS-TV (Channel 5), said Thursday that he had not seen the news release by OSHA.

"At this time, obviously, I have nothing to say until I see what exactly the text of this is," said Mr. Csahanim, who was out of town at a trade show.

Officials with Lin Broadcasting Corp. in Providence, R.I., which owns Channel 39, could not be reached.

The family of Mr. Stinson declined to comment.

Attorneys representing the families of Mr. Kelly and Mr. Campbell said that other factors may have contributed to the accident and should be taken into consideration.

"OSHA's jurisdiction only applies to employers, and these findings do not address potential liability of other involved parties," said Bob Vial, who is representing the family of Mr. Kelly. "As far as we know, OSHA would not have investigated the potential culpability of Lin Broadcasting Corp., the owner of the tower."

Joel Reese, the attorney for Mr. Campbell's family, issued a similar statement. "The Campbell family regrets that OSHA does not have jurisdiction to enforce telecommunications industry standards for the construction and modification of broadcast towers."

Structure served many communications entities

THE ASSOCIATED PRESS

RAYMOND - An almost 2,000-foot television tower twisted and toppled in rural Hinds County on Thursday, sending three workers to their deaths.

The names of the workers, employed by a Canadian-based firm and apparently working on large cables anchoring the WLBT-TV tower, were not made public.

"It's just a big twisted mass of wreckage," said Kathy Hickey, whose home is about 100-yards from where the tower fell. "It doesn't look anything like a tower."

Witnesses said sections of the tower, one of the tallest in the country, crashed to earth on either side of a transmitter building. Most of the 31-year-old structure toppled toward a cow pasture, sparing a few homes in the rural area southwest of Raymond.

Three other people, including employees of the tower company, were on the ground but were not injured.

Dennis Smith, WLBT's news director, said emergency crews were delayed reaching the area because a number of live power lines had been knocked down by sections of the falling tower.

In addition to WLBT, Jackson's NBC affiliate, the tower also served Mississippi Educational Television, a radio station, and communications for state and federal agencies. A dispatcher at the Hinds County Sheriff's Department in Raymond said her broadcast system was knocked out when the tower fell.

Smith said the three crewmen were apparently getting ready to work on cables that hold the tower in place. A deputy at the scene said the workers apparently were well up the tower when it began to fall.

"Most stations in the country are having to re-string guy wires because of FCC requirements," Smith said.

Exhibit C

Hype Definition

Waiting for HDTV? Don't Go Dumping Your Old Set Just Yet

Promise of Digital Television Is Fading as Broadcasters Complain About Costs

'No One Knows What to Do'

By KYLE POPE and MARK ROBICHAUX
Staff Reporters of THE WALL STREET JOURNAL
NEW YORK — Filmmaker Barry Rebo was certain he had found the next big thing in television.

On a trip to Japan, he saw his first high-definition TV set—with a picture that looked nearly three-dimensional and with crystal-clear sound. He figured that when consumers saw HDTV, they would toss out their old sets just as they had traded their black-and-white sets for color. Using special digital cameras, he began to create the largest collection of HDTV programs in America.

Today, more than a decade later, not a single one of Mr. Rebo's films has made it into America's living rooms as HDTV. "This thing could go on forever," says Mr. Rebo, now gray haired, sitting in a sparse office in New York's meat-packing district.

Rarely in the history of American business has there been a new technology that promised so much—and delivered so little. HDTV, it turns out, is going to take far longer, cost far more, and attract far fewer viewers than anyone has predicted. After lobbying for more than a decade to get HDTV approved by the government, broadcasters got what they wanted, but now they are backing off promises to switch their signals entirely to HDTV.

Broadcasters Backpedal

Instead of making a massive switch over to a single HDTV signal starting next year, as originally promised, networks are now talking about using just a portion of the high-capacity digital spectrum of HDTV to offer extra channels of standard TV signals that don't look much different from what is already on. The backpedaling has infuriated many in Washington who feel they were duped by the industry's lobbying effort. Some in Congress are threatening to levy fines and penalties against broadcasters that don't live up to their HDTV promises.

But industry executives say there was no duplicity — it's just that the technology guys were way ahead of the money guys. "This whole digital transition has been left to the engineers until just about six months ago," says Michael Jordan, chairman of CBS parent Westinghouse Electric Corp. "All of a sudden we got this thing approved, and nobody has a clue what they are going to do." Even its biggest boosters concede that HDTV, once the Holy Grail of the TV industry, has left many in the dark. "The truth is that no one knows what to do," says HSN Inc. Chairman Barry Diller, who sat on a federal committee that reviewed the advanced TV technology. HSN owns Silver King Broadcasting.

Boon for Builders

Because the HDTV effort is in such flux, even Wall Street can't handicap the players or sort out who, if anyone, will make money. To meet deadlines put in place by federal regulators, local TV stations are now spending about \$16 billion to build transmission towers and equip their stations with receiving and transmitting equipment. That is a boon for a handful of equipment makers and tower builders, but there is little return in sight for the broadcasters. "We're all going to have to spend a lot of money, and it's not going to get us anywhere," says Jim Goodmon, president of Capitol Broadcasting Inc., the first company in the U.S. to deliver an HDTV signal.

HDTV pictures offer a higher-resolution, wider-screen picture similar to the ones seen in movie theaters today. The picture itself is rectangular, as opposed to square, and packs in twice as many lines of resolution as conventional TV sets. That, combined with the fact that digital signals aren't as susceptible to interference, help make the HDTV picture much clearer.

Few Sets Coming

But there are no TV sets out there actually equipped to receive such signals—and until the networks decide their plans, Sony Corp., Zenith Electronics Corp., Thomson SA's Thomson Consumer Electronics and others won't be selling the sets in mass quantities anytime soon.

What is surprising about the current quagmire is how recently HDTV seemed so imminent and how the very players who pushed hardest for HDTV are hedging their bets. HDTV had little or nothing to do with consumer demand; it was born out of a power grab by the broadcasting community in the 1980s as a way to keep valuable broadcast spectrum from being parceled out to paging companies and other data-communications concerns. Convinced that TV air space was their right, broadcasters argued that they needed the spectrum for advanced television technology, which they said would guarantee free over-the-air TV forever.

The broadcast networks enlisted the support of Congress, tapping into xenophobic fears about America's technological battle with the Japanese. HDTV quickly became embroiled in Sputnik-type hype. Just as the Russian space program of the Cold War era was the first to put a man in space, NHK, the hometown Japanese national broadcasting company, had produced the first HDTV picture. By the

middle of the 1980s, Congress was being told that HDTV was essential to the survival of the American electronics industry. Even the Defense Department jumped in on the theory that high-quality television was crucial to success on the battlefield, as well. Egging on the whole spectacle was the consumer-electronics industry, which had fallen into a slump as sales of conventional TV sets matured.

An alliance of U.S. companies came up with a standard for HDTV that was adopted by the FCC last December. This past spring, the FCC began to give away the valuable digital real estate, on a promise from broadcasters that all of the nation's consumers would be receiving digital TV, which includes high definition, in just nine years. The broadcast industry and the FCC tentatively agreed on a schedule for the rollout of HDTV, which included a mandate that 26 TV stations in the country's biggest cities — representing about 30% of U.S. TV households — must begin broadcasting in a digital format by late 1998.

License Risk

That is the first step to making the full conversion to HDTV. By mid-1999, that initial group will expand to 40, and by 2000, to 120 TV stations. By 2006, all of the TV stations in the country must be broadcasting a digital signal or risk losing their FCC license.

But nobody believes the deadlines will be met. Local TV stations have to install new transmitters, new digital production facilities and new towers at a cost of between \$8 million and \$10 million each. That is about \$16 billion nationwide, estimates the National Association of Broadcasters. The networks, meantime, face the additional costs of new digital production equipment, transmitters, even cameras and new sets.

At General Electric Co.'s NBC alone, the cost of conversion has already exceeded \$50 million. News Corp.'s Fox Broadcasting estimates that it will have to pay \$100 million to fully convert its 22 owned-and-operated stations. "We're talk-

Disney Co.'s ABC Television and Sinclair Broadcast Group Inc., one of the largest TV-station groups in the country, say they are exploring that option, and Fox and CBS may follow suit.

PBS Model

The Public Broadcasting System may be a model; it is considering a compromise plan to create channels as well as broadcasting two to three hours a day of HDTV.

The networks see the chance to offer new channels on the digital spectrum as a way to compete with the plethora of cable channels chipping away at their broadcast audience. Of course, the networks still haven't figured out where they will find all the programming to fill the new channels. And the new channels probably won't be seen by most people. For viewers to see them, they will have to buy a yet-to-be-designed "converter" box that translates that signal so it can be seen on existing analog TV sets. The cable industry, meantime, is already rolling out its own version of a set-top box to vastly expand the number of channels for cable subscribers.

But critics say that forgoing a single HDTV signal in favor of squeezing more channel space out of the spectrum is breaking promises broadcasters made to win control of broadcast rights valued at tens of billions of dollars. Rep. Billy Tauzin, a Louisiana Republican and chairman of the House Telecommunications subcommittee, said in an interview that if broadcasters balk on HDTV, they could face hefty fees or severe public-service requirements. "I can guarantee ABC and every one of the broadcasters that there will undoubtedly be a debate," if they scale back on their HDTV plans, says Rep. Tauzin. "I would bank on that fact."

Gigi Sohn, an attorney for the Media Access Project, a digital-TV watchdog group, blames the networks for the HDTV mess. "I think the broadcast industry has pulled one over on Congress and the American public," she says.

Tower Trouble

Broadcasters deny that is the case. Besides the huge costs, they note, there are logistical hurdles that no one anticipated. Among them: a shortage of crews trained to build the towers that hold the digital transmitters. "There's no way we can build this infrastructure in the time frame they've set," says Ronald L. Gibbs, president of Lodestar Towers Inc., a tower builder in Tequesta, Fla. "These things just aren't stamped out in mass production." And in many communities, the construction of new towers for digital television has attracted fierce opposition.

Meanwhile, broadcasters' hesitation has led to a chicken-and-egg standoff with the makers of HDTV sets. The broadcasters don't want to commit to broadcasting their signal in HDTV because no one owns an HDTV set and demand is uncertain. Manufacturers say they are waiting on the networks. Set makers concede that while they hope to have the first HDTV sets by next year, generating consumer interest will be impossible if there is no programming in HDTV from the networks.

Concerned that the broadcasters are punting on HDTV, some manufacturers are considering providing the programming themselves. Japan's Matsushita Electric Industrial Co., which makes Panasonic TV sets, is in talks with Hollywood about co-producing HDTV shows. "Programming will be the key driver" of HDTV sales, said Peter Fannon, Matsushita's government-affairs director, at an HDTV conference in New York yesterday sponsored by UBS Securities Inc.

Lukewarm Consumers

Surveys about how consumers will react are mixed. A poll commissioned by Harris Corp., a maker of digital-TV equipment, said that 39% of the people surveyed said they would buy new TV sets as soon as they were available, and 47% said they would make the purchase in one to two years. In another survey this summer of 1,000 consumers by Price Waterhouse, TV buyers said they would be willing to spend only about \$150 more for an HDTV set than for a conventional one.

Clearly, consumers appear indisposed to spend anything close to the \$3,000 to \$5,000 price that early HDTV sets will command. The initial steep price of HDTV means that fewer than 40% of the households in America will own HDTV sets by 2006, according to the Electronic Industries Association. That fact recently helped prompt federal regulators to back off of an earlier deadline that gave local TV stations until 2006 to retrofit their equipment to allow HDTV.

In the long term, TV-set makers stand to gain from a conversion to HDTV. For most of the past decade, the TV-set business has been a dud, dominated by a mature, sated market — 98% of U.S. homes have at least one TV set already — and poor margins. There are about 250 million TV sets, or about 2.5 sets per household, UBS says in a report, and one out of four families buys a TV set every year.

Scary Time

But some TV manufacturers say consumers aren't buying new sets now, waiting instead for new digital sets. In hopes of keeping its high-margin business from

collapsing, Zenith Electronics, a Glenview, Ill., TV-set maker, last month took the unusual step of promising to refund the cost of its large-screen TV sets for customers who want to buy a new HDTV. "There are too many unanswered questions at this point," said Phillip J. Schoonover, senior vice president of TV retailer Best Buy Co. "This can be a scary and expensive time."

In the end, the TV-set makers and retailers could make out the best if, after a decade, consumers like what they see coming from digital-television signals and begin a wholesale switch to HDTV sets, much like the switch to color TV after the 1950s. And prices of consumer-electronics products typically drop when there is a mass market.

But echoing the views of nearly everybody involved in HDTV, Westinghouse's Mr. Jordan says, "None of this is going to happen from a business standpoint for at least three years. Right now, this is a tempest in a teapot."

Promise of Digital Television Is Fading